

section 401(c)(1) at the time contributions were made on his behalf under the plan).

(d) *Additional tax*—(1) *Early redemption*. Except as provided in paragraph (d)(2) of this section, under section 409(c) if a retirement bond is redeemed by the registered owner before he attains age 59½, his tax under chapter 1 of the Code is increased by an amount equal to 10 percent of the proceeds of the redemption includible in his gross income for the taxable year. Except in the case of the credits allowable under sections 31, 39, or 42, no credit can be used to offset the tax described in the preceding sentence.

(2) *Limitations*. Paragraph (d)(1) of this section shall not apply if—

(i) During the taxable year of the registered owner in which a retirement bond is redeemed, the registered owner becomes disabled within the meaning of section 72(m)(7), or

(ii) A retirement bond is tendered for redemption in accordance with paragraph (b)(2)(i) of this section.

[T.D. 7714, 45 FR 52799, Aug. 8, 1980]

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[T.D. 9321, 72 FR 19276, Apr. 17, 2007]

#### § 1.409A-1 Definitions and covered plans.

(a) *Nonqualified deferred compensation plan*—(1) *In general.* Except as otherwise provided in this paragraph (a), the term *nonqualified deferred compensation plan* means any plan (within the meaning of paragraph (c) of this section) that provides for the deferral of compensation (within the meaning of paragraph (b) of this section). Whether a plan provides for the deferral of compensation generally is determined at the time the service provider obtains a legally binding right to the compensation under the plan, and is not affected by any retroactive change to the plan to characterize the right as one that does not provide for the deferral of compensation. For example, amounts deferred under a nonqualified deferred compensation plan do not become an excluded death benefit if the plan is amended so that the amounts are payable only upon the death of the service provider. If a principal purpose of a plan is to achieve a result with respect to a deferral of compensation that is inconsistent with the purposes of section 409A, the Commissioner may treat the plan as a nonqualified deferred

compensation plan for purposes of section 409A and the regulations thereunder.

(2) *Qualified employer plans.* The term *nonqualified deferred compensation plan* does not include a qualified employer plan. The term *qualified employer plan* means any of the following plans:

- (i) Any plan described in section 401(a) and a trust exempt from tax under section 501(a) or that is described in section 402(d).
- (ii) Any annuity plan described in section 403(a).
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- (iv) Any simplified employee pension (within the meaning of section 408(k)).
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- (vi) Any plan under which an active participant makes deductible contributions to a trust described in section 501(c)(18).
- (vii) Any eligible deferred compensation plan (within the meaning of section 457(b)).
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- (ix) Any plan described in § 1022(i)(2) of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829, 942) (Sept. 2, 1974) (ERISA).

(3) *Certain foreign plans*—(i) *Participation addressed by treaty.* With respect to an individual for a taxable year, the term *nonqualified deferred compensation plan* does not include any scheme, trust, arrangement, or plan maintained with respect to such individual, to the extent contributions made by or on behalf of such individual to such scheme, trust, arrangement, or plan, or credited allocations, accrued benefits, earnings, or other amounts constituting income, of such individual under such scheme, trust, arrangement, or plan, are excludable by such individual for Federal income tax purposes pursuant to any bilateral income tax convention, or other bilateral or multilateral agreement, to which the United States is a party.

(ii) *Participation by nonresident aliens, certain resident aliens, and bona fide residents of possessions.* With respect to an